

HOUSE No. 1865

By Mr. Walsh of Boston, petition of Martin J. Walsh relative to medical disputes in workers' compensation cases. Labor and Workforce Development.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT RELATIVE TO THE WORKERS' COMPENSATION SYSTEM.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 8 of chapter 152 of the General Laws as
2 appearing in the 2002 Official Edition, is hereby amended by
3 striking the text in clause (d) of subsection (2) and inserting in its
4 place the following:— “the insurer has possession of (i) a medical
5 report from the treating physician, the report indicates that the
6 employee is capable of return to the job held at the time of injury, or
7 other suitable job pursuant to section thirty-five D consistent with
8 the employee’s physical and mental condition as reported by said
9 physician and (ii) a written report from the person employing said
10 employee at the time of the injury indicating that such a suitable job
11 is open and has been made available, and remains open to the
12 employee; provided, however, that if due, compensation shall be
13 paid under section thirty-five; provided, further, that if such
14 employee accepts said employment subsequent to a modification or
15 termination pursuant to this paragraph, compensation shall be rein-
16 stated at the prior rate if the employee should cease work in accord-
17 dance with paragraph (c) of this section or should be terminated by
18 the employer because of the employee’s physical or mental inca-
19 pacity to perform the duties required by the job;”

1 SECTION 2. Section 8 of chapter 152 of the General Laws, as so
2 appearing, is hereby amended by striking out the text in subsection
3 (4) and inserting in its place the following:—
4 “An insurer who makes prompt payment of benefits pursuant to
5 section seven and continues payment for one hundred eighty days or

6 more, without contesting liability, may, no sooner than sixty days
7 following a referral to the industrial accident board of a complaint
8 for termination or reduction of benefits under section thirty-four,
9 thirty-four A or thirty-five, if no conference order has been issued
10 during such sixty day period, request the administrative judge to
11 which the case has been assigned to appoint an impartial physician
12 to examine the employee. The administrative judge may, within
13 thirty days of the request for an impartial examination, appoint a
14 physician from the appropriate roster to conduct an examination of
15 the employee and make a report within fourteen days. If such report
16 contains clear and convincing evidence of increased capability to
17 work, the insurer may, with the administrative judge's consent,
18 reduce or terminate benefits in accordance with such report. In such
19 instances, if the requirements of this subsection have been complied
20 with, when an order is issued on the insurer's complaint, if such
21 order requires that retroactive weekly benefits are due the employee,
22 an additional payment equal to two times the average weekly wage
23 in the commonwealth shall also be paid to the employer.

24 At any time subsequent to the filing of a claim or complaint
25 solely regarding the reasonableness or necessity of a particular
26 course of medical treatment, any party to such claim or complaint
27 may request the senior judge to appoint a physician from the appro-
28 priate roster to conduct an examination of the employee and make a
29 report within fourteen days. If the senior judge determines that said
30 claim or complaint involves only the issue of reasonable and neces-
31 sary medical treatment, he shall make such appointment within
32 seven days. The impartial physician shall determine the appropri-
33 ness of any medical treatment claimed or denied by the parties, using
34 any guidelines adopted by the health care services board or promul-
35 gated by the department, if applicable. The determination by the
36 impartial physician shall be some evidence of the appropriateness or
37 inappropriateness of the course of medical treatment in question at
38 any hearing at which such treatment is at issue. The parties shall
39 have the right to submit other medical evidence of the appropriate-
40 ness or inappropriateness of the disputed medical treatment."

1 SECTION 3. Section 11A of chapter 152 of the General Laws, as
2 appearing in the 2002 Official Edition, is hereby amended by
3 striking the text in subsection (2) and inserting in its place the
4 following:—

5 “When any claim or complaint involving a dispute over medical
6 issues is the subject of an appeal of a conference order pursuant to
7 section ten A, the administrative judge may appoint an impartial
8 medical examiner from the roster to examine the employee examiner
9 from the roster. Any party who files such appeal shall also submit
10 the fee set by the commissioner for the provision of an impartial
11 medical report within ten days of filing said appeal; provided, how-
12 ever, that where more than one party appeals, the fee shall be
13 divided equally among all appealing parties; provided, further, that
14 such amount paid by a claimant shall be refunded by the insurer to
15 any claimant who prevails at hearing.

16 The impartial medical examiner, so appointed, shall examine the
17 employee and make a report at least one week prior to the beginning
18 of the hearing, which shall be sent to each party. No hearing shall be
19 commenced sooner than one week after such report has been
20 received by the parties. The report of the impartial medical examiner
21 shall, where feasible, contain a determination of the following: (i)
22 whether or not a disability exists, (ii) whether or not any such dis-
23 ability is total or partial and permanent or temporary in nature, and
24 (iii) whether or not within a reasonable degree of medical certainty
25 any such disability has as its major or predominant contributing
26 cause a personal injury arising out of and in the course of the
27 employee’s employment. Such report shall also indicate the examin-
28 er’s opinion as to whether or not a medical end result has been
29 reached and what permanent impairments or losses of function have
30 been discovered, if any. Such impartial physician’s report shall con-
31 stitute evidence of the matters contained therein.

32 Failure of an employee to report to an impartial medical examiner
33 agreed upon or appointed under this section or section eight, after
34 due notice and without cause, and failure to submit to such examiner
35 all relevant medical records, medical reports, medical histories, and
36 any other relevant information requested without good reason, shall
37 constitute sufficient cause for suspension of benefits pursuant to
38 section forty-five. The report of the impartial medical examiner
39 shall be admitted into evidence at the hearing. Either party shall
40 have the right to engage the impartial medical examiner to be
41 deposed for purposes of cross examination.”